CLERK'S COPY.

CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1928

No. 571 / 15

WHEELER LUMBER BRIDGE AND SUPPLY COMPANY OF DES MOINES, IOWA,

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE COURT OF CLAIMS

FILED DECEMBER 8, 1928

(33,880)

(33,880)

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 1, 1929

[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

DECEMBER TERM, 1927

No. E-567

WHEELER LUMBER BRIDGE AND SUPPLY COMPANY OF DES MOINES, IOWA, Plaintiff,

v.

UNITED STATES OF AMERICA, Defendant

Before Chief Justice Booth, Judge Moss, Judge Green, Judge Sinnott

Mr. Jesse I. Miller appeared for the plaintiff.

Mr. Herman J. Galloway, Assistant Attorney General, and Mr. Joseph H. Sheppard appeared for the defendant.

STATEMENT OF FACTS

The Court of Claims of the United States hereby certifies that the record of the above-entitled cause now pending before it discloses the following.

The Wheeler Lumber Bridge and Supply Company of Des Moines, Iowa, duly filed its petition in the Court of Claims on the 14th day of November, 1925, praying judgment against the United States in the sum of $1,833.89 with interest, as will more fully appear from the petition, a copy of which accompanies this certificate as Exhibit A.

The cause was duly referred to one of the commissioners of the court, who duly filed his report herein on October [fol. 2] 11, 1927, a copy of which accompanies this certificate as Exhibit B, the correctness and accuracy of which report is conceded by both parties and no exceptions thereto were filed.

There being a division of the court in this case and the court being in doubt, we are of the opinion that the case cannot properly be disposed of without certifying to the Supreme Court certain questions of law involved therein concerning certain sections of the Revenue Acts of 1917

and 1918, and receiving the instructions of said Supreme Court thereon. The provisions of said Revenue Acts are as follows:

Sections 500, 501 and 502 of the Revenue Act of 1917 (40 Stat. 314, 315) which provide as follows:

"Section 500. That from and after the 1st day of November, 1917, there shall be levied, assessed, collected and paid (a) a tax equivalent to 3% of the amount paid for the transportation by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight consigned from one point in the United States to another. * * *

"Section 501. That the taxes imposed by Section 500 shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.

"Section 502. That no tax shall be imposed under Section 500 upon any payment received for services rendered to the United States, or any state, territory, or the District of Columbia. The right to exemption under this Section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe."

Sections 500 and 501 of the Revenue Act of 1918 (40 Stat. 1101, 1102) which read as follows:

"Section 500. That from and after April 1, 1919, there shall be levied, assessed, collected and paid in lieu of taxes [fol. 3] imposed by Section 500 of the Revenue Act of 1917—(a) a tax equivalent to 3% of the amount paid for the transportation on or after such date, by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight transported from one point in the United States to another. * * *

"(h) No tax shall be imposed under this section upon any payment received for services rendered to the United States or to any State or Territory or the District of Columbia. The right to exemption under this subdivision shall be evidenced in such manner as the Commissioner with the approval of the Secretary, may by regulation prescribe."

"Section 501. (a) That the taxes imposed by Section 500 shall be paid by the person paying for the services or facilities rendered."

As appears from the facts found herein, the plaintiff during the years 1918, 1919, 1920 and 1921 on orders obtained by its salesmen sold certain quantities of lumber to nine counties in the State of Nebraska and to one county in the State of Iowa, said lumber having been ordered by said counties for the purpose of repairing or building bridges in those counties, such repairing or building in all cases being performed directly by employees of the respective counties. The plaintiff's salesmen obtained the orders for said lumber from the county commissioners or boards of county supervisors, and in each and every instance the prices quoted by the salesmen and accepted by the county officials were f. o. b. at points of delivery in the respective counties, said points being later designated by the said county officials. The lumber was shipped to the various counties from southern or Pacific or other points and was consigned to the plaintiff or to the order of the shipper at destination. Freight bills and invoices covering these shipments were forwarded to the county clerks by [fol. 4] the plaintiff and upon arrival of the shipments the said clerks would present the freight bills to the railroad authorities, pay the freight, obtain receipted freight bills and accept the shipments. The county clerks then deducted the amount of the freight charges from the invoices and forwarded to plaintiff the receipted freight bills and checks for the balance. In each instance the amount of the check plus the amount of the freight bill totaled the price which the county contracted to pay for the lumber at the time the order was placed with the salesman. A typical invoice, such as was used by the plaintiff, covering each shipment involved in the case appears in finding V of the commissioner's report.

The contention of the plaintiff is that the transportation charges above described were payments received by the common carriers for services rendered to the several county governments referred to and that said transportation charges were therefore exempt from the transportation tax by virtue of Sections 502 of the Revenue Act of

1917 and 500 (h) of the Revenue Act of 1918, respectively, and the decision of the Supreme Court of the United States in the case of Panhandle Oil Company v. The State of Mississippi, decided on May 14, 1928 (No. 288, October term, 1927), and that the transportation charges in each instance having been paid directly by the respective county governments, the liability, if any, for the transportation tax attached to said county governments and not to the plaintiff. [fol. 5] The contention of the defendant is that the transportation services rendered in this case were rendered by the railroad to the plaintiff and not to the various county governments referred to and, therefore, do not fall within the exemption of the revenue statutes.

Under these circumstances this court being divided and being in doubt as to the application of said exemption sections of said Revenue Acts and of said case of the Panhandle Oil Company of Mississippi against the United States desires the instructions of the Supreme Court upon the following question, a decision on which is deemed indispensable to the disposition of this case now before it and a proper discharge of the court's duties herein.

Question Certified

Question: Where lumber is purchased by a county from a private corporation for the purpose of repairing or building, directly through its own employees, bridges in said county, said lumber to be delivered f. o. b. at a specified point and said lumber is shipped from various points consigned to the plaintiff or to the order of the shipper and payment of the freight charge is made by the county clerk of said county and the amount thereof deducted from the invoice price of said lumber, the balance of said invoice being later remitted by said county clerk to the plaintiff, are the services rendered in the transportation of said lumber rendered to said county within the provisions of Section 502 of the Revenue Act of 1917 (40 Stat. 314, 315) and Section 500 (h) of the Revenue Act of 1918 (40 Stat. 1101, 1102) and the decision of the Supreme Court of the United States in said case of the Panhandle Oil Company v. the State of Mississippi, 277 U. S. 218.

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the above question, certify and transmit the same to the Court [fol. 6] of Claims of the United States for its guidance in the further progress of the case.

Fenton W. Booth, Chief Justice; McKenzie Moss, Judge; Wm. R. Green, Judge; N. J. Sinnott, Judge, the judges who sat on the hearing of the case.

[fol. 7] Clerk's certificate to foregoing omitted in printing.

[fol. 8] EXHIBIT A TO CERTIFICATE

IN THE UNITED STATES COURT OF CLAIMS

No. E-567

WHEELER LUMBER BRIDGE AND SUPPLY COMPANY of DES MOINES, IOWA, Petitioner,

vs.

THE UNITED STATES, Respondent

PETITION—Filed November 14, 1925

To the Honorable the Chief Justice and the Judges of the Court of Claims:

The claimant, Wheeler Lumber Bridge and Supply Company of Des Moines, Iowa, a corporation, respectfully states:

I

The Wheeler Lumber Bridge and Supply Company of Des Moines, Iowa, is and was at all times hereinafter mentioned a corporation duly created under the laws of the State of Iowa and organized and existing for the purpose of and at all times hereinafter mentioned engaged in manufacturing and selling lumber and building supplies.

II

On the 3rd day of October, 1917, the President of the United States approved an Act entitled "The Revenue Act of 1917," Sections 500, 501 and 502, of which provided in part as follows:

[fol. 9] "Section 500. That from and after the 1st day of November, 1917, there shall be levied, assessed, collected and paid (a) a tax equivalent to 3% of the amount paid for the transportation by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight consigned from one point in the United States to another. * * *

"Section 501. That the taxes imposed by Section 500 shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.

"Section 502. That no tax shall be imposed under Section 500 upon any payment received for services rendered to the United States, or any state, territory, or the District of Columbia. The right to exemption under this Section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe."

On the 24th day of February, 1919, the President of the United States approved an Act entitled "The Revenue Act of 1918," Sections 500 and 501, of which provided in part as follows:

"Section 500. That from and after April 1, 1919, there shall be levied, assessed, collected and paid in lieu of taxes imposed by Section 500 of the Revenue Act of 1917—(a) a tax equivalent to 3% of the amount paid for the transportation on or after such date, by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight transported from one point in the United States to another. * * *

"(h) No tax shall be imposed under this section upon any payment received for services rendered to the United States or to any State or Territory or the District of Columbia. The right to exemption under this subdivision shall be evidenced in such manner as the Commissioner

with the approval of the Secretary, may by regulation prescribe."

"Section 501. (a). That the taxes imposed by Section 500 shall be paid by the person paying for the services or facilities rendered."

That the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury did by Treasury Department Regulations No. 49 promulgated under the authority of the said Revenue Act of 1918 provide as follows:

[fol. 10] "Article 97. The right to exemption under Section 500 from the tax on amounts paid for the transportation of property shall be evidenced in one of the following ways:

"(a) payment of such amounts directly to the carrier by the government to which the services are rendered."

III

Claimant states that during the period June 1, 1918 to August 31, 1921, it sold to certain County Governments in the States of Nebraska and Iowa, all of which Counties are listed on the attached schedule marked "A" certain lumber which was purchased by said various Counties for the construction and repairing of bridges within such respective counties. Said material was sold with the understanding that it was to be used exclusively by the said County governments for the construction and repairing of bridges within said respective counties under the direct supervision of the respective Boards of Supervisors and County Engineers of said counties and not by any contractor or subcontractor doing said work for said counties. Said materials were used by said counties respectively in the manner above indicated. Said materials were purchased by each county at a stipulated price per thousand feet board measure f. o. b. claimant's yards. It was stipulated and agreed, however, between claimant and each of said respective counties that there should be added to the said purchase price in each instance the delivery charges between the point of shipment and the point of delivery. Said lumber was, therefore, in each instance, billed to said respective counties at a price which represented the price

per thousand feet plus delivery charges. Claimant states [fol. 11] that such agreement was made with each County as a matter of convenience only and with the understanding that each respective County was to pay the transportation charges thereon and deduct the same from the amount of the bill rendered in each case by claimant.

IV

Said agreements were made by claimant after having first consulted the Collector of Internal Revenue at Dubuque, Iowa, with respect thereto. It was the purpose of claimant and the respective counties involved to save for each county the tax imposed by Section 500 of the Revenue Act of 1917 and Section 500 of the Revenue Act of 1918. Claimant was advised by the Collector of Internal Revenue at Dubuque, Iowa, that if said lumber was shipped to the respective counties in the manner indicated in the next preceding paragraph the freight bills covering the transportation of said lumber, if paid by said respective counties, would in each instance be exempt from the payment of the transportation tax levied by the Revenue Acts of 1917 and 1918. That each County understood that the price agreed to be paid by it for lumber included transportation charges thereon; that each County government understood that such transportation charges were to be paid by it and that each shipment was billed in the manner indicated in order that said counties should have the benefit of the exemption provided in the Revenue Acts of 1917 and 1918.

[fol. 12]

V

That the freight bills covering each of said shipments of lumber were actually paid by the respective counties purchasing said shipments directly to the proper common carriers and said payments were then deducted by the respective counties from the amount of the bills rendered therefor by claimant.

VI

Claimant states that between June 1, 1918 and August 31, 1921, it made various shipments of lumber to the several County governments set out on schedule "A" hereof.

That the transportation charges on each of such shipments were paid by the respective county governments purchasing same but that no transportation tax was paid thereon by said county governments. Thereafter the Collector of Internal Revenue at Dubuque, Iowa, after having previously advised claimant that such shipments were exempt from the transportation tax attempted to assess against and collect from this plaintiff the transportation taxes involved in said shipments. Said taxes upon said shipments were from time to time thereafter assessed against claimant by said Collector but all said assessments were abated by claimant pending a final decision by the Collector. Thereafter and on or about the 1st day of November, 1923, said abatement claims were finally rejected by the Collector of Internal Revenue at Dubuque, Iowa, and the Commissioner of Internal Revenue and the said Collector demanded of claimant the various amounts of taxes, interest [fol. 13] and penalties involved in said shipment all of which are set out in detail on Schedule "A" hereof and which aggregated $1,833.89.

VII

Thereafter, to-wit, between November 17, 1923, and January 3, 1924, claimant paid to the said Collector of Internal Revenue, Dubuque, Iowa, under protest and duress the sum of $1,833.89 representing the amounts of taxes, interest and penalties involved in said shipments.

VIII

Immediately thereafter and on or about January 3, 1924, claimant duly filed an application to the Bureau of Internal Revenue, to-wit a claim for refund on Treasury Department, form No. 843, praying for the refund of the sum of $1,833.89, representing the payment of said taxes, interest and penalties aforesaid. Said application was in all respects regular and in accordance with the law and regulations and was accompanied by all the necessary evidence and proof of facts. The facts alleged in said application were not traversed or denied by the Secretary of the Treasury or the Commissioner of Internal Revenue or by any representative of the United States. Although said application was in all respects complete and in due form, neverthe-

less on or about the 10th day of June, 1925, the Commissioner of Internal Revenue rejected and denied said application and has continuously denied and refused to pay claimant the moneys asked for and demanded in its application as aforesaid, as shown by the records of the Treasury Department hereby referred to and prayed to be considered a part of this petition.

[fol. 14] IX

Your petitioner is advised by counsel and therefore avers that the taxes collected from it as set out above were illegally and erroneously collected for the following reasons, to-wit:

(a) That the said transportation charges hereinabove described were payments received by certain common carriers for services rendered to the several county governments herein referred to and that said transportation charges, were, therefore, exempted from the transportation tax by Sections 502 of the Revenue Act of 1917 and 500 (h) of the Revenue Act of 1918, respectively; and that

(b) The transportation charges in each instance having been paid directly by the respective county governments, the liability, if any, for the transportation tax, attached to said county governments and not to claimant.

X

No action upon this claim other than herein set forth has been taken before the Congress or any of the Departments of the Government.

XI

Your petitioner avers that there is justly due and owing to it on account of the matters hereinbefore set forth the sum of $1,833.89 with interest thereon from November 17, 1923, after deducting all just offsets and payments on the part of the United States; that it is the sole owner of the claim herein sued upon, that no asignment or transfer of the claim or any part thereof or any interest in the same has been made and that it is a citizen of the United States and loyal to the United States Government and has not at

any time aided or abetted in any manner or given comfort [fol. 15] to any sovereign government that is or ever has been at war with the United States.

Wherefore your petitioner prays judgment against the United States in the sum of $1,833.89 with interest.

Wheeler Lumber Bridge and Supply Company of Des Moines, Iowa, by Jesse I. Miller, Attorney for Claimant.

Duly sworn to by Jesse I. Miller. Jurat omitted in printing.

[fol. 16] SCHEDULE A TO PETITION

Wheeler Lumber Bridge and Supply Co.

List of Transportation Taxes, Penalties, and Interest Paid by Wheeler Lumber Bridge and Supply Co.

County	Tax	Interest	Penalty	Total
1. Pierce County, Nebr.	$297.11	$14.86	$99.59	$114.45
2. Dawes County, Nebr.	111.15	.....	45.70	45.70
3. Johnson County, Nebr.	5.33	.27	3.01	3.28
4. Keith County, Nebr.	54.02	2.70	17.74	20.44
5. Clay County, Nebr.	39.91	2.00	14.79	16.79
6. Nickolls County, Nebr.	171.38	8.57	68.84	77.41
7. Dawson County, Nebr.	51.33	2.56	17.59	20.15
8. Dawson County, Nebr.	44.07	2.21	18.30	20.51
9. Nance County, Nebr.	291.50	.....	81.42	81.42
10. Lincoln County, Nebr.	43.61	2.18	17.80	19.98
11. Appanoose County, Iowa.	200.72	10.04	93.59	103.63
Tax	$1,310.13	$45.39	$478.37	$523.76
Penalty and Interest	523.76			
Total	$1,833.89			

[fol. 17] EXHIBIT B TO CERTIFICATE

COURT OF CLAIMS OF THE UNITED STATES

No. E-567

WHEELER LUMBER, BRIDGE & SUPPLY COMPANY

v.

THE UNITED STATES

REPORT OF COMMISSIONER—Filed October 11, 1927

To the Honorable the Chief Justice and Associate Judges of the Court of Claims of the United States:

Pursuant to the order of reference in the above-entitled

cause dated April 30, 1927, Myron M. Cohen, commissioner, herewith reports the following facts:

I

The plaintiff, during the period involved in this suit, was and still is a corporation duly organized and existing under the laws of the State of Iowa with its principal places of business at Des Moines, Iowa.

II

During the years 1918, 1919, 1920, and 1921, the plaintiff, on orders obtained by its salesmen, sold certain quantities of lumber to nine counties in the State of Nebraska and to one county in the State of Iowa, said lumber having been ordered by the said counties for the purpose of repairing or building bridges in those counties. The bridge repairing or building in all cases was to be performed directly by employees of the respective counties.

[fol. 18]

III

Plaintiff's salesmen obtained the orders for the said lumber from the county commissioners or boards of county supervisors and in each and every instance the prices quoted by the salesmen and accepted by the county officials were f. o. b. at points of delivery in the respective counties, said points to be later designated by the said county officials.

IV

The lumber was shipped to the various counties from southern or Pacific or other points and was consigned to the plaintiff or to the order of the shipper at destination. Freight bills and invoices covering these shipments were forwarded to the county clerks by the plaintiff and upon the arrival of the shipments the said clerks would present the freight bills to the railroad authorities, pay the freight, obtain receipted freight bills, and accept the shipments. The county clerks then deducted the amount of the freight charges from the invoices and forwarded to plaintiff the

receipted freight bills and checks for the balance. In each instance the amount of the check plus the amount of the freight bill totaled the price which the county contracted to pay for the lumber at the time the order was placed with the salesman.

V

The following is a typical invoice which was used by the plaintiff covering each shipment involved in this case:

[fol. 19] Des Moines, Iowa, April 27, 1920.

DAWSON COUNTY, NEBR.:

O. D. Smith, County Commissioner, Cozad, Nebr., Neil France, Clerk, Lexington, Nebr., to the Wheeler Lumber, Bridge & Supply Co., Dr.

Fir and Oak Bridge Lumber, Red Cedar Posts, Cypress, Red Cedar and Oak Piling

200 South West Ninth Street

Phone: Walnut 630. Terms: Net 30 days. Car No. and Initial IC 97005

#1 fir, rough:

573 pcs 3 x 12-16′ 27, 504′, $52.50	$1,443.96
Deduct for freight pd	465.35
	978.61

May 7, 1920, shipped to Cozad, Nebr.

Notice to Purchaser.—This invoice will become due and subject to sight draft sixty days from date of Bill of lading covering shipment. Positively no discounts are allowed.

Amount of invoice	$1,443.96
Estimated freight	457.00
Amount due	986.36

If not paid when due, we will assume the liberty to draw on you for the amount due together with all charges for collection and exchange added to the net amount. If not

honored, will charge you 7 per cent interest on all accounts past due. Exchange must be paid by purchaser.

Attached to each invoice was a notice or paster as follows:

Upon arrival of this shipment at destination, kindly secure freight bill in duplicate, sending to us the original immediately upon payment of same, retaining duplicate for your own files if you wish it. This original freight bill is a [fol. 20] part payment for the lumber sold you, a receipt for a portion of our money, and it is very necessary that we have this document in order that we may check it up for any overcharges that may exist, such as overweights, incorrect rates, stake allowances, etc., thereby obtaining prompt action from the railroads. You no doubt are not aware of the fact that the claim department of a railroad will give a claim more consideration, quicker action, and quicker settlement if we file with them the original paid freight bill at the same time claim is filed.

We are notified that the railroads under Government operation will no longer consider claims for shortage when supported by affidavit alone, but that paid expense bills must carry notation of shortage before claims will be considered.

It is therefore very necessary that if any shortage is found when unloading this shipment you report immediately to the railroad agent and insist that notation be made by him on expense bill, showing that you claim shortage, and how much.

Your courtesy and cooperation in the above matters are politely solicited. Will you not kindly give us your aid?

Wheeler Lumber, Bridge & Supply Co., Des Moines, Iowa.

VI

On March 7, 1918, the plaintiff addressed the following letter, Plaintiff's Exhibit I-A, to the deputy collector of internal revenue at Dubuque, Iowa:

[fol. 21] March 7, 1918.

Louis Murphy, U. S. Revenue Collector, Dubuque, Iowa.

Dear Sir: Would like to have you advise us whether or not freight shipments consigned to counties and municipali-

ties are subject to the 3% war tax now assessed by the railroads. We understand that the railroad fares of State employees and other like officials are not subject to the tax on passengers when these officials are traveling in the interest of the State, and we are wondering whether or not shipments of bridge material consigned to the various counties would be exempt from the tax on freight.

Thanking you in advance for your prompt reply, we are,

Very truly yours, (Signed) Wheeler Lumber, Bridge & Supply Co., by P. E. Hoak, Traffic Mgr.

peh-se.

There then followed the following correspondence between the plaintiff and the deputy collector of internal revenue at Dubuque, Iowa, which letters have been offered in evidence as Plaintiff's Exhibits I-B, I-C, and I-D, respectively.

March 22, 1918.

Wheeler Lumber, Bridge & Supply Co., Des Moines, Iowa.

GENTLEMEN: Replying to your letter of March 7th, you are advised that freight shipments consigned to counties and municipalities are exempt from the 3% war tax in the [fol. 22] event that the county or municipality pays the freight charges.

State employees and like officials in discharge of their duties are exempt from the tax upon railroad fares.

It will be necessary in all cases of shipments made by freight or express, where Government bills or lading are not used, for the officer or employees of the United States, State, Territory, or District of Columbia to satisfy the agent to whom the charges are paid that the service rendered is for the United States, State, Territory, or District of Columbia, as the case may be, and the agent collecting the charges should note on the records of his office the name of the consignor and consignee, and indicate thereon that such shipment covered service rendered the United States, State, Territory, or District of Columbia, as the case may be, and was not subject to the tax.

Respectfully, (Signed) Louis Murphy, Collector.

March 23, 1918.

Louis Murphy, U. S. Collector, Dubuque, Iowa.

DEAR SIR: Have your letter of the 22d inst., and enclosed you will find copy of bill of lading used on all our shipments of lumber which we made to the different counties in this State and Nebraska. We use a shipper's order form, which is a negotiable instrument, and our shipments are billed to ourselves for the reason that the interstate com- [fol. 23] merce law specifically provides that it shall be unlawful for any carrier to give information to any party relative to a shipment except that party be the consignor or the consignee.

We quite often want to file claims for overcharges on freight, or trace the shipment while in transit, and in fact there are many conditions which arise during the course of business, making it very imperative that we appear on the bill of lading as consignee. All those shipments are lumber for different counties. We are wondering whether or not it would be sufficient that the agent of the carrier at the different destinations satisfy himself upon delivery of shipment that it is for the county in order that no war tax be assessed. You understand that our shipments are of lumber sold at delivered price, which includes freight charges and the county auditor pays the freight and deducts this freight from the gross amount of our bill and then remits to us the balance after deducting the freight he has paid. We are wondering just what action is necessary on our part in order to eliminate this war tax. Any information you can give us will be greatly appreciated.

There are many shipments made since the first of November, on which tax has been assessed, and which no doubt should be refunded. Please advise us just what action is necessary to get this refund on these shipments.

Awaiting to hear from you further, we are,

Very truly yours, (Signed) Wheeler Lumber, Bridge & Supply Co., by P. H. Hoak, Traffic Mgr.

peh-se.

[fol. 24] March 27, 1918.

Wheeler Lumber, Bridge & Supply Co., Des Moines, Iowa.

GENTLEMEN: In reply to your letter of March 23, relative to the nontaxability of your shipments consigned to various counties in this and other States, you are advised, as per information contained in my letter to you of March 22, that it will be necessary in all cases of shipments consigned to the county, for the county auditor, to satisfy the agent at point of destination that the shipment is intended to be used directly for the county and that in such a case tax may be waived. It will be necessary for the railroad company collecting these charges to note on the records of their office the name of the consignor and consignee and indicate thereon that such shipment was intended for the United States, State, or a political subdivision thereof.

By this method of procedure it is believed that the railroad agent will waive tax on all shipments of this kind.

"Relative to shipments made since the first of November, on which tax has been assessed and which you claim should be refunded, wish to quote for your information the following:

"Since, in the ordinary course of transportation, overcharges and undercharges will occur, officers, agents, and other employees of carriers are authorized, in adjusting such overcharges and undercharges to adjust the tax accordingly. Nothing in these regulations, however, authorizes an adjustment of a tax by a carrier in any instance [fol. 25] where, after collection of a charge and tax, it is claimed that the charge is entitled to exemption from the tax by reason of exportation, governmental use, or otherwise."

Respectfully, (Signed) Louis Murphy, Collector.

VII

On and between November 16, 1923, and January 3, 1924, the collector of internal revenue at Dubuque, Iowa, assessed and collected $1,833.89 from the plaintiff to cover excise taxes on freight transportation and penalties, and interest for the period from June, 1918, to August, 1921, on the sales

of lumber involved herein. Of that amount, $1,310.13 was the tax on the freight transportation, $478.37 was the penalty, and $45.39 was the interest. The taxes including the interest and penalties were all paid under protest as shown by the several receipts introduced in evidence as Plaintiff's Exhibits No. 13. With the exception of one carload of lumber sold to Nance County, Nebr., on January 15, 1918, and one carload of lumber sold to the same county on February 19, 1918, all of the shipments upon which the taxes were assessed were made subsequent to the correspondence set out in Paragraph VI hereof.

VIII

The plaintiff subsequently filed with the Commissioner of Internal Revenue at Washington a claim for refund of the $1,833.89 paid by it, and on June 10, 1925, the said claim was rejected by the commissioner.

[fol. 26]

IX

The plaintiff is the sole owner of the claim involved in this suit and has made no assignment thereof or any part thereof or interest therein.

Respectfully submitted,
Myron M. Cohen, Commissioner.

[Endorsed:] Court of Claims. No. E-567. Wheeler Lumber Bridge & Supply Company of Des Moines, Iowa, v. The United States. Filed Dec. 3, 1928, Court of Claims.

Endorsed on cover: File No. 33,880. Court of Claims. Term No. 571. Wheeler Lumber Bridge and Supply Company of Des Moines, Iowa, vs. The United States of America. (Certificate.) Filed Dec. 8th, 1928. File No. 33,880.